

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2007-385-C**

<b>In Re:</b>	)	
<b>Application of Bandwidth.com CLEC,</b>	)	
<b>LLC to Provide Resold Interexchange</b>	)	<b>SETTLEMENT AGREEMENT</b>
<b>And Local Exchange Telecommunications)</b>	)	
<b>Services Throughout South Carolina</b>	)	
	)	

This Settlement Agreement (“Settlement Agreement”) is made by and among the Office of Regulatory Staff (“ORS”) and Bandwidth.com CLEC, LLC (“Bandwidth.com” or “the Company”) (collectively referred to as the “Parties” or sometimes individually as “Party”);

WHEREAS, on October 25, 2007, Bandwidth.com filed its Application requesting (i) a Certificate of Public Convenience and Necessity be granted authorizing the Company to provide resold and facilities-based local exchange and interexchange telecommunications services throughout the State of South Carolina; (ii) alternative regulation of its interexchange business services consistent with Orders 95-1734 and 96-55 in Docket No. 95-661-C as modified by Order No. 2001-997 in Docket No. 2000-407-C; (iii) flexible regulation for its local exchange telecommunications services consistent with Order No. 98-165 in Docket No. 97-467-C; (iv) waiver of certain regulations of the Public Service Commission of South Carolina (“Commission”), specifically Regulations 103-610 regarding location of records and 103-631 concerning publishing and distributing local exchange directories; and (v) a waiver of any requirement to maintain financial records in conformance with the Uniform System of Accounts (“USOA”);

WHEREAS on November 5, 2007, the Commission issued a Notice of Filing and Hearing and established a return date of December 6, 2007, for the filing of letters of protest or petitions to intervene and established a hearing date of February 4, 2008 for the application to be heard before a hearing examiner;

WHEREAS, on November 14, 2007, the South Carolina Telephone Coalition (“SCTC”) filed a Petition to Intervene in this docket;

WHEREAS, on January 3, 2008, counsel for ORS entered a Revised Notice of Appearance in this matter;

WHEREAS, on November 16, 2007, the Commission issued its Order No. 2007-826 by which the Commission appointed David Butler, Esquire as the Hearing Examiner in this matter;

WHEREAS, on January 9, 2008 the SCTC filed with the Commission a Stipulation between the SCTC and Bandwidth.com;

WHEREAS, on January 2, 2008, the Company pre-filed the direct testimony of Kade Ross with the Commission;

WHEREAS, the purpose of this proceeding is to review the application filed by Bandwidth.com and its requests (i) for a Certificate of Public Convenience and Necessity to provide facilities-based and resold local exchange and interexchange telecommunications services within the State of South Carolina; (ii) for alternative regulation of its interexchange business services, consumer card services, operator services, and private line services consistent with Orders 95-1734 and 96-55 in Docket No. 95-661-C as modified by Order No. 2001-997 in Docket No. 2000-407-C; (iii) for flexible regulation for its local exchange telecommunications services consistent with Order No. 98-165 in Docket No. 97-467-C; (iv) for waiver of certain of the Commission Regulations, specifically Regulations 103-610 regarding location of records and

103-631 concerning publishing and distributing local exchange directories; and (v) for waiver of any requirement to maintain financial records in conformance with the USOA;

WHEREAS, since the filing of the notice, ORS has conducted a review of the technical, managerial, and financial expertise of the Company to provide the services requested in the Application;

WHEREAS, ORS has reviewed the Application and the financial data provided by Bandwidth.com, and ORS has calculated certain performance ratios based upon information provided by the Company;

WHEREAS, ORS has investigated the services to be offered by Bandwidth.com and its intended customer service plans;

WHEREAS, ORS has reviewed the proposed tariffs submitted by the Company;

WHEREAS, ORS has reviewed the prefiled testimony of Kade Ross;

WHEREAS, as a result of its investigations, ORS has determined (a) Bandwidth.com intends to offer resold and facilities-based local and long-distance telecommunications services such as residential and business local exchange services, switched outbound ("1 +" dialing), toll-free service, directory assistance services, and operator services; (b) the officers of the Company possess sufficient technical and managerial abilities to adequately provide the services applied for; (c) based upon the information provided and the analysis performed, Bandwidth.com appears to have access to sufficient financial resources necessary to provide the services proposed in its application; (d) the Company's proposed tariffs with the amendments as agreed to in this Settlement Agreement comply with Commission statutes and regulations; (e) the Company agrees that the services to be provided by Bandwidth.com will meet the service standards required by the Commission; (f) the provision of services by Bandwidth.com will not

adversely impact the availability of affordable telecommunications services; (g) to the extent it is required to do so by the Commission, the Company will participate in the support of universally available telephone service at affordable rates; and (h) the provision of interexchange services by Bandwidth.com will not adversely impact the public interest;

WHEREAS, to ensure compliance with the Commission's statutes and regulations, the Parties have agreed to the following comprehensive settlement of all issues in this docket;

WHEREFORE, in the spirit of compromise, the Parties hereby stipulate and agree to the following terms and conditions:

1) The Parties agree that Bandwidth's Application and exhibits to the Application are incorporated into this Settlement Agreement and made a part hereof;

2) The Parties agree to stipulate into the record before the Commission this Settlement Agreement. The Parties also agree to stipulate to the pre-filed testimony of the Company's witness Kade Ross without cross-examination by ORS;

3) Bandwidth.com has submitted financial data, which was provided as Exhibit 4 to the Company's Application and which was granted Protective Treatment by Commission Hearing Examiner Directive dated November 8, 2008 and which financial data is incorporated by reference;

4) The Parties agree that Bandwidth.com should be granted a Certificate of Public Convenience and Necessity to provide facilities-based and resold local exchange and interexchange telecommunications services within the state of South Carolina;

5) The Company has requested a waiver of 26 S.C. Code Ann. Regs. 103-610 concerning the location of books and records. However, S.C. Code Ann. §58-9-380 (Supp. 2006) provides that:

Each telephone utility shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in such office all such books, accounts, papers and records as shall reasonably be required by the Office of Regulatory Staff. No books, accounts, papers or records required by the ORS to be kept within the State shall be removed at any time from the State except upon such conditions as may be prescribed by the Office of Regulatory Staff.

ORS is agreeable to allowing Bandwidth.com to maintain its books and records outside of the State of South Carolina in exchange for Bandwidth.com agreeing to provide access to its books and records. ORS is agreeable to the Company maintaining its books and records at its principal offices in the State of North Carolina, and Bandwidth.com agrees to notify the ORS of any change in the location of the principal office or in the location where the books and records are maintained. This provision of the Settlement Agreement shall not be construed as a waiver by ORS of S.C. Code Ann. § 58-4-55 (Supp. 2006) or § 58-9-1070 (Supp. 2006). ORS expressly reserves its rights to require the production of books, records and other information located within or outside of the State of South Carolina in order to carry out its duties and compliance with any state or federal regulation;

6) ORS does not oppose the Company's request for waiver of 26 S.C. Code Ann. Regs. 103-631 which requires the publication and distribution of directories, and Bandwidth.com agrees to make arrangements with publishers of local directories in South Carolina to include the names and telephone numbers of Bandwidth.com's subscribers and customers in local directories, unless a subscriber indicates his/her desire for an unpublished telephone number;

7) Bandwidth.com has requested a waiver of any rule or regulation that might require a carrier to maintain its financial records in conformance with the USOA. The Company acknowledges that S.C. Code Ann. § 58-9-340 (Supp. 2006) provides that the ORS may, in its discretion and subject to the approval of the Commission, prescribe systems of accounts to be

kept by telephone utilities subject to the commission's jurisdiction and that the ORS may prescribe the manner in which the accounts shall be kept and may require every telephone utility to keep its books, papers, and records accurately and faithfully according to the system of accounts as prescribed by the ORS. The Company agrees to keep its books, papers, and records in such a manner that permits ORS to audit its revenues and expenses for compliance with programs such as but not limited to the Universal Service Fund ("USF") and the Interim LEC Fund, dual party relay service fund, and gross receipts. Bandwidth.com agrees to complete the reporting forms for such programs as, but not limited to, USF, dual party relay service fund, Interim LEC, and gross receipts as may be required by the ORS of telecommunications companies certificated to operate within South Carolina and as the reporting forms may be amended from time to time;

8) ORS does not oppose Bandwidth.com's requests (a) for flexible regulation for its local telecommunications service offerings consistent with Order No. 98-165 in Docket No. 97-467-C, such flexible regulation including specifically (i) adoption of a competitive rate structure incorporating maximum rate levels with the flexibility for rate adjustment below the maximum rate levels and (ii) presumptively valid tariff filings upon filing subject to an investigation of such tariff filing being instituted within thirty (30) days and (b) for alternative regulation of its interexchange business services, consumer card services, operator services, and private line service offerings consistent with the procedures described and set forth in Orders 95-1734 and 96-55 in Docket No. 95-661-C as modified by Order No. 2001-997 in Docket No. 2000-407-C, specifically (i) regulation of these services listed above in the same manner as these services are regulated of AT&T Communications of the Southern States, Inc., (ii) removal of the maximum rate tariff requirements for Bandwidth.com's business services, private line, and customer

network-type offerings, except in instances governed by Order No. 2001-997 which reinstituted maximum rates for surcharges and rates associated with certain intrastate operator-assisted calls; (iii) presumptively valid tariff filings for these interexchange services unless an investigation of a particular filing is instituted within seven (7) days, in which case the tariff filing will be suspended until resolution of the investigation or until further order of the Commission; and (iv) grant Bandwidth.com the same treatment as AT&T Communications of the Southern States, Inc. in connection with any future relaxation of reporting requirements;

9) The Company agrees to resell the services only of those local exchange providers or interexchange carriers authorized to do business in South Carolina by the Commission;

10) Bandwidth.com agrees that it will allow an end-user of resold services to access an alternative interexchange carrier or operator service provider if the end-user expresses such a desire;

11) Bandwidth.com agrees to file necessary financial, and other, information with the Commission and ORS for universal service fund reporting, dual party relay service fund reporting, interim LEC fund reporting, annual reporting, gross receipts reporting, and/or any other reporting which may now or in the future be applicable to telecommunications providers such as Bandwidth.com. The Parties agree that such reports shall be filed pursuant to ORS' instructions and monies shall be remitted in accordance with the directions of the ORS and the Commission.

12) The Company agrees to maintain its books and records in a manner that would permit ORS to examine any of the Company's reports filed with the Commission and provided to ORS.

13) Bandwidth.com agrees to file with the Commission and ORS a completed authorized utility representative forms within thirty (30) days of the Commission's order.

14) In the event that Bandwidth.com offers prepaid calling card services in the future, the Company agrees that it shall post a surety bond in the amount of \$5,000 as required by the Commission;

15) In the event that Bandwidth.com offers local and long distance services to end users, Bandwidth.com agrees to comply with the verification regulations governing change of preferred carriers as established by Federal Communications Commission ("FCC"). In addition, in the event that Bandwidth.com offers local and long distance services to end users, the Company agrees to comply with the marketing practices and guidelines established by the Commission in Order No. 95-658;

16) Bandwidth.com agrees to comply with South Carolina Code Section § 58-9-300 entitled "Abandonment of Service." Additionally, to the extent applicable, the Company agrees to adhere to the FCC's rule 47 C.F.R. § 64.1190 and 64.1130 regarding preferred carrier freezes and the requirement that the form of the written authorization for the institution of the freeze be a separate or easily separable document. Prior to abandonment of service, the Company shall remove any preferred carrier freeze so as to enable consumers to seamlessly transfer their telephone numbers to another provider;

17) To the extent necessary, Bandwidth.com agrees to engage in good faith negotiations with non-BellSouth incumbent local exchange carriers whose networks interconnect with BellSouth at the same local tandem regarding traffic exchange;

18) It is understood and agreed that Bandwidth.com will not initially offer or provide any service that would implicate Title 23, Chapter 47 of the South Carolina Code Annotated



regarding “Public Safety Communications Centers,” but in the event that the Company in the future offers or provides a service to which Title 23, Chapter 47 of the South Carolina Code regarding “Public Safety Communications Centers,” also known as 911 services, the Company agrees to comply with Title 23, Chapter 47 of the South Carolina Code Annotated, which governs the establishment and implementation of a “Public Safety Communications Center,” also known as 911 services.” At that time, Bandwidth.com agrees to contact the appropriate authorities regarding 911 services in the counties and cities where Bandwidth.com will be operating prior to initiating local service in South Carolina and shall provide the 911 coordinator in each county and/or city with information regarding Bandwidth.com’s operations. Attached as Exhibit 1 to this Settlement Agreement is a memorandum from the State 911 Office which provides contact information for the County 911 Coordinators;

19) The Company agrees to comply with all rules and regulations of the Commission unless the Commission has expressly waived such rule or regulation;

20) Bandwidth.com agrees to file a final revised tariff with both the ORS and the Commission and the revised tariff shall reflect and be in accordance with ORS’ recommendations as set forth in the summary attached as Exhibit 2 to this Settlement Agreement.

21) ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10 (B). S.C. Code § 58-4-10(B)(1) through (3) read in part as follows:

...’public interest’ means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina; and

(3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the Settlement Agreement reached among the Parties serves the public interest as defined above;

22) The Parties agree to advocate that the Commission accept and approve this Settlement Agreement in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding and that the Commission take no action inconsistent with its adoption. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Settlement Agreement and the terms and conditions contained herein.

23) The Parties agree that signing this Settlement Agreement will not constrain, inhibit, impair or prejudice their arguments or positions held in other collateral proceedings, nor will it constitute a precedent or evidence of acceptable practice in future proceedings. If the Commission declines to approve the Settlement Agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement in its entirety without penalty or obligation.

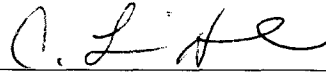
24) This Settlement Agreement shall be interpreted according to South Carolina law.

25) The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Settlement Agreement by affixing its signature or by authorizing counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and email

signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the original signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement. The Parties agree that in the event any Party should fail to indicate its consent to this Settlement Agreement and the terms contained herein, then this Settlement Agreement shall be null and void and will not be binding on any Party.

WE AGREE:

**Representing the Office of Regulatory Staff**

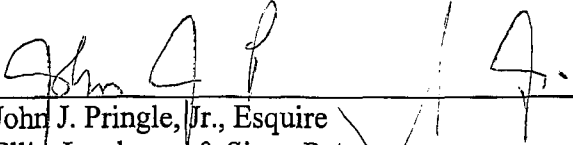


C. Lessie Hammonds, Esquire  
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Email: lhammon@regstaff.sc.gov

01/29/08  
Date

WE AGREE:

**Representing Bandwidth.com CLEC, LLC**

  
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John J. Pringle, Jr., Esquire

Ellis, Lawhorne & Sims, P.A.  
Post Office Box 2285  
Columbia, SC 29202  
Telephone: (803) 343-1270  
Fax: (803) 799-8479  
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1/28/08  
Date

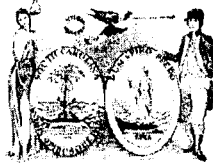
STATE OF SOUTH CAROLINA  
*State Budget and Control Board*  
OFFICE OF RESEARCH & STATISTICS

**EXHIBIT 1**

MARK SANFORD, CHAIRMAN  
GOVERNOR

GRADY L. PATTERSON, JR.  
STATE TREASURER

RICHARD ECKSTROM  
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE COMMITTEE

ROBERT W. HARRELL, JR.  
CHAIRMAN, WAYS AND MEANS COMMITTEE

FRANK W. FUSCO  
EXECUTIVE DIRECTOR

REMBERT C. DENNIS BUILDING  
1000 ASSEMBLY STREET, SUITE 425  
COLUMBIA, SOUTH CAROLINA 29201

Bobby Bowers  
DIRECTOR

August 2, 2004

To: Telephone Companies New to South Carolina

In an effort to continue providing quality emergency services to the citizens of South Carolina, the State 911 Office requests that before beginning telephone services in a county, you contact the 911 Coordinator in that county. This will allow both parties to obtain important information about providing 911 services in that county. If you have already begun services, then contact the coordinator as soon as possible.

A list of County 911 Coordinators can be found on the South Carolina E911 homepage at [www.ors.state.sc.us/digital/E-911.ASP](http://www.ors.state.sc.us/digital/E-911.ASP). If you have any questions related to 911 in South Carolina, you may contact E911 Coordinations at the Office of Research and Statistics at 803-734-3883. The person responsible for this can also be found on the 911 homepage. Please be aware that some cities may have their own E911 systems, these are also listed on the 911 homepage. These city coordinators will need to be contacted in addition to the county coordinators.

ECONOMIC RESEARCH  
WILLIAM GILLESPIE  
(803) 734-3805

GEODETIC SURVEY  
5 GEOLOGY ROAD  
COLUMBIA, S.C. 29210  
LEWIS LAPINE  
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DIGITAL CARTOGRAPHY  
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HEALTH & DEMOGRAPHICS  
STATISTICS  
1919 BLANDING STREET  
COLUMBIA, S.C. 29201  
WALTER P. BAILEY, M.P.H.  
(803) 898-9941

**Recommendations for Local Exchange Services Tariff No. 2**

**Original Page 20 2.5.2**—The Company should modify the language in the paragraph as follows-- “Failure of the Customer to pay all undisputed amounts by the Due Date is a material breach and a five (5) day **written** notice shall be required...”

**Original Page 30 2.12.2.1.H**—The Company should change the word “confirm” to “conform”.

**Original Page 39 4.1.3**—Within the Chart, the Company states that Saturday through Sunday will be charged under the night weekend rates. However, the times listed are from 11pm to 8am. What rate will the Customer be charged if they use services between the hours of 8am and 11pm?

**Original Page 40 4.2**—Does the Company plan on providing Services to Residential Customers? If so, a new section will need to be added describing residential services, current rates, and maximum rates.

**Additional Recommendations:**

- The Company should file all tariffs and tariff revisions with the Commission and provide a copy to the ORS
- The Company should include language referencing the Customers ability to discontinue service that conforms to SC Reg. 103-624.3
- If the Company has connection, reconnection, maintenance, premise visit, service, special service, restoral fees, etc. a description of these services should be included in the tariff along with current and maximum rates.
- Again, if the Company provides residential services, descriptions of these services as well as maximum and current rates should be included.

**Recommendations for InterExchange Services Tariff No. 1**

**Original Page 20 2.5.2**—The Company should change the word “accruing” to “accrue”.

**Original Page 20 2.5.2**—The Company should modify the language in the paragraph as follows-- “Failure of the Customer to pay all undisputed amounts by the Due Date is a material breach and a five (5) day **written** notice shall be required...”

**Original Page 24 2.6.4**—There is a typo in second sentence—“The interest n the deposit shall accrue annually”.

**Original Page 26 2.8.1**—There is a typo in the second paragraph—“Records will be kept of Interruptions or Failures of Service which will include the date, time, duration, cause and steps taken to t correct...”.

**Original Page 27 2.11**—The Company should add the following language to the end of the paragraph-- “The Special Customer arrangements will be made available to the ORS upon request.”

**Original Page 30 2.12.2.1.H**—The Company should change the word “confirm” to “conform”.

**Original Page 34 3.2.1**—The final sentence in the paragraph is incomplete-- “Such letter of notification shall”

**Original Page 37 4.1.3**—Within the Chart, the Company states that Saturday through Sunday will be charged under the night weekend rates. However, the times listed are from 11pm to 8am. What rate will the Customer be charged if they use services between the hours of 8am and 11pm?

**Original Page 38 4.2.1**—The Company should provide a description for the Select Plan and the Standard Plan. In other words, beside the rates, what is the difference in the two plans.

**Original Page 39 4.2.2**—The Company should provide a description of how mileage band is calculated.

**Additional Recommendations:**

- The Company should file all tariffs and tariff revisions with the Commission and provide a copy to the ORS
- The Company should include language referencing the Customers ability to discontinue service that conforms to SC Reg. 103-624.3
- If the Company has connection, reconnection, maintenance, premise visit, service, special service, restoral fees, etc. a description of these services should be included in the tariff along with current and maximum rates.
- Again, if the Company provides residential services, descriptions of these services as well as maximum and current rates should be included.
- The recommendations marked as “typo” in IXC tariff No. 2 should be addressed in Local Exchange Tariff No. 1 as well.



**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**  
**DOCKET NO. 2007-385-C**

IN RE:

Application of Bandwidth.com CLEC, LLC	)	
to Provide Resold Interexchange and Local	)	<b>CERTIFICATE OF</b>
Exchange Telecommunications Services	)	<b>SERVICE</b>
Throughout South Carolina	)	

This is to certify that I, Pamela J. McMullan, have this date served one (1) copy of the **SETTLEMENT AGREEMENT** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

John J. Pringle, Jr. , Esquire  
Ellis, Lawhorne & Sims, P.A.  
Post Office Box 2285  
Columbia, SC, 29202

Margaret M. Fox, Esquire  
McNair Law Firm, P.A.  
Post Office Box 11390  
Columbia, SC, 29211



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Pamela J. McMullan

January 29, 2008  
Columbia, South Carolina